

HOUSE BILL 2404

By Travis

AN ACT to amend Tennessee Code Annotated, Title 50,  
relative to employment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-1-304, is amended by deleting the section and substituting instead the following:

(a) As used in this section:

(1) "Employee" includes:

(A) A person employed by the state or any municipality, county, department, board, commission, agency, instrumentality, political subdivision, or any other entity of the state;

(B) A person employed by a private employer; or

(C) A person who receives compensation from the federal government for services performed for the federal government, notwithstanding that the person is not a full-time employee of the federal government;

(2) "Employer" includes:

(A) The state or any municipality, county, department, board, commission, agency, instrumentality, political subdivision, or any other entity of the state;

(B) A private employer; or

(C) The federal government as to an employee who receives compensation from the federal government for services performed for the

federal government, notwithstanding that the person is not a full-time

federal employee; and

(3) "Illegal activities" means activities that are in violation of the criminal or civil code of this state or the United States, or any regulation intended to protect the public health, safety, or welfare.

(b) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.

(c) No employee shall be discharged or terminated for filing a workers' compensation claim.

(d)

(1) Any employee discharged or terminated in violation of subsection (b) or (c) shall have a cause of action against the employer for retaliatory discharge and any other damages to which the employee may be entitled, subject to the limitations set out in § 4-21-313, except that in the case of an employer who has fewer than eight (8) employees at the time the cause of action arose, no compensatory damages shall be awarded for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

(2) Any employee terminated in violation of subsection (b) solely for refusing to participate in, or for refusing to remain silent about, illegal activities, and who prevails in a cause of action against an employer for retaliatory discharge for the actions, shall be entitled to recover reasonable attorney's fees and costs.

(e)

(1) No employee shall be discharged or terminated solely for participating or engaging in the use of an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law, if the employee participates or engages in the use in a manner that complies with all applicable

employer policies regarding the use during times at which the employee is working.

(2) No employee shall be discharged or terminated solely for participating or engaging in the use of the product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law if the employee participates or engages in the activity during times when the employee is not working.

(f) If any employee files a cause of action for retaliatory discharge for any improper or frivolous purpose, such as to harass or to cause needless increase in costs to the employer, the court, upon motion or upon its own initiative, shall impose upon the employee an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred, including reasonable attorney's fees.

(g) In any civil cause of action for retaliatory discharge brought pursuant to this section, or in any civil cause of action alleging retaliation for refusing to participate in or remain silent about illegal activities, the plaintiff shall have the burden of establishing a prima facie case of retaliatory discharge. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one (1) or more legitimate, nondiscriminatory reasons existed for the plaintiff's discharge. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the plaintiff's discharge and that the stated reason was a pretext for unlawful retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary

judgment. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of unlawful retaliation.

(h) This section abrogates and supersedes the common law with respect to any claim and remedy that could be brought under this section, including any claim for workers' compensation retaliation.

(i) No claim for punitive or exemplary damages shall be permitted under this section.

SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to all causes of action accruing, or pending in court, as of that date.